

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

MICHAEL BALLIET, Individually, and as
Guardian of MARGARET BALLIET; and
PEGGY BALLIET,

Plaintiffs,

v.

CIVIL ACTION NO. 2:09-CV-136-J

SUBARU OF AMERICA, INC.; SUBARU-
ISUZU AUTOMOTIVE, INC.; FUJI HEAVY
INDUSTRIES, LTD.; HIGH PRO
LOGISTICS; REFIK APINYAN; and
ZACHARY CHARLES PATTON,

Defendants.

**UNOPPOSED MOTION FOR ORDER APPROVING CREATION OF AND
REQUIRING DISTRIBUTION OF PROCEEDS TO A SPECIAL NEEDS TRUST
ESTABLISHED PURSUANT TO 42 U.S.C. §1396p(D)(4)(A)
FOR THE BENEFIT OF MARGARET BALLIET**

TO THE HONORABLE JUDGE OF SAID COURT:

Margaret Balliet, Plaintiff, by and through Michael Balliet, Sr., and through counsel, hereby moves this Court to approve the creation of The Margaret Balliet Personal Injury Special Needs Trust and Subordinated Medicare Set Aside Arrangement, and order distribution of net settlement proceeds awarded to Plaintiff in this case to be paid to said special needs trust established for the sole benefit of Plaintiff. In support of this motion, Plaintiff says as follows:

1. Plaintiff's claim in this matter arises from her severe personal injuries allegedly resulting from the negligence of the Defendants.
2. Plaintiff has been determined to be a "disabled person" within the meaning of 42 U.S.C. §1382c(a)(3) (Section 1614(a)(3) of the Social Security Act), and by reason of such determination she is receiving certain public assistance benefits, including Social

Security Disability Insurance (“SSDI”), and will soon also receive Medicare. Due to Plaintiff’s injuries, it is important that access to these benefits and any other government benefits such as Medicaid, be maintained. Medicaid is a “needs-based” public assistance benefit, which provides important access to medical care and services not otherwise available to Plaintiff.

3. Plaintiff is an Alabama resident and currently resides in Birmingham, Alabama. The payment of funds to an Alabama conservatorship (the traditional vehicle for managing property of an incapacitated person) for Plaintiff would jeopardize any current and future eligibility for needs-based government and other public assistance benefits, for which she may be eligible. To avoid this result, funds to be paid on Plaintiff’s behalf should be paid to a “Special Needs Trust” established under the authority of 42 U.S.C. §1396p(d)(4)(A) for her sole benefit. As required by such federal statute, this Trust would contain a provision directing that any proceeds remaining in the Trust at Plaintiff’s death be first used to repay Medicaid to the extent it had rendered medical assistance on her behalf during her lifetime.

4. A document entitled “The Margaret Balliet Personal Injury Special Needs Trust and Subordinated Medicare Set Aside Arrangement” (the “Trust”), is attached hereto as Exhibit “A” and submitted to this Court for approval. Michael Balliet, Sr., Plaintiff’s father, has agreed to serve as Co-Trustee along with Plaintiff’s brother, Michael Balliet, Jr., and The Trust Company of Sterne Agee, Inc. Sterne Agee shall serve as the sole corporate Co-Trustee, and shall hold and manage all trust funds. Upon the Court’s approval, the Trust will be signed by Michael Balliet, Sr., Michael Balliet, Jr., and the Trust Company of Sterne Agee, Inc.

5. The purpose of the Trust is to maximize all resources available to Plaintiff, including "needs-based" and other governmental sources of help. Plaintiff's condition is such that she will continue to require significant medical care throughout her lifetime. Without the Trust to receive settlement proceeds, Plaintiff would be precluded from such government assistance until the settlement funds were exhausted to below \$2,000.00. The Trust contains the required provision to repay Medicaid at Plaintiff's death for assistance it rendered on her behalf. The purpose of the Trust is to supplement, not replace, public benefits so as to improve the overall quality of life of the beneficiary.

WHEREFORE PREMISES CONSIDERED, Plaintiff requests: (1) this Court's approval of the establishment of The Margaret Balliet Personal Injury Special Needs Trust and Subordinated Medicare Set Aside Arrangement, and direction that proceeds to be paid on Plaintiff's behalf in connection with the settlement and dismissal of this action be paid directly to the corporate Co-Trustee of the Trust, to be held and applied thereunder for the sole benefit of Plaintiff; and (2) such other, further or different relief as this Honorable Court may seem just and proper, the premises considered.

Respectfully submitted,

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/s/ *Broadus A. Spivey*

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/s/ Brian P. Heinrich

Brian P. Heinrich

GUARDIAN AD LITEM FOR MARGARET BALLIET

CERTIFICATE OF CONFERENCE

The undersigned hereby states that he has conferred with counsel regarding the filing of this Motion and all counsel stated that they do not oppose the Motion.

/s/ Brian P. Heinrich

Brian P. Heinrich

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 4th day of October, 2010, a true and correct copy was delivered as follows:

Abigail A. Mathews HARTLINE, DACUS, BARGER, DREYER & HERN, LLP 6688 North Central Expressway Suite 1000 Dallas, Texas 75206	Certified Mail, Return Receipt Requested <input type="checkbox"/> United States Regular Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Via Facsimile Transmission <input type="checkbox"/> Via Hand-Delivery <input type="checkbox"/> Via Electronic Delivery <input checked="" type="checkbox"/>
Larry D. Warren Ball & Weed PC 10001 Reunion Place, Suite 600 San Antonio, Texas 78216	Certified Mail, Return Receipt Requested <input type="checkbox"/> United States Regular Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Via Facsimile Transmission <input type="checkbox"/> Via Hand-Delivery <input type="checkbox"/> Via Electronic Delivery <input checked="" type="checkbox"/>
Broadus A. Spivey Law Offices of Broadus A. Spivey PC 48 East Avenue Austin, Texas 78701	Certified Mail, Return Receipt Requested <input type="checkbox"/> United States Regular Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Via Facsimile Transmission <input type="checkbox"/> Via Hand-Delivery <input type="checkbox"/> Via Electronic Delivery <input checked="" type="checkbox"/>
Jack Nelson, Jr. NELSON & NELSON 1001 Main Street, Suite 601 Lubbock, Texas 79401	Certified Mail, Return Receipt Requested <input type="checkbox"/> United States Regular Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Via Facsimile Transmission <input type="checkbox"/> Via Hand-Delivery <input type="checkbox"/> Via Electronic Delivery <input checked="" type="checkbox"/>

/s/ Brian P. Heinrich

Brian P. Heinrich